



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2016-0058; FRL-9978-61-Region 5]

Air Plan Approval; Michigan; Regional Haze Progress Report

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the regional haze progress report under the Clean Air Act (CAA) as a revision to the Michigan state implementation plan (SIP). Michigan has satisfied the progress report requirements of the Regional Haze Rule. Michigan has also provided a determination of the adequacy of its regional haze plan with the progress report.

DATES: This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R05-OAR-2016-0058. All documents in the docket are listed on the www.regulations.gov web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy

form. Publicly available docket materials are available either through www.regulations.gov or at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Gilberto Alvarez, Environmental Scientist, at (312) 886-6143 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Gilberto Alvarez, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6143, alvarez.gilberto@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. Background
- II. What is EPA's Response to the Comments?
- III. What Action is EPA Taking?
- IV. Statutory and Executive Order Reviews

I Background

States are required to submit a progress report every five years that evaluates progress towards the Reasonable Progress Goals (RPGs) for each mandatory Class I Federal area within the

State and in each mandatory Class I Federal area outside the State which may be affected by emissions from within the State. See 40 CFR 51.308(g). States are also required to submit, at the same time as the progress report, a determination of the adequacy of their existing regional haze SIP. See 40 CFR 51.308(h). The first progress report is due five years after the submittal of the initial regional haze SIP.

Michigan submitted its regional haze plan on November 5, 2010. EPA partially approved Michigan's regional haze plan into its SIP on December 3, 2012 (77 FR 71533).

As part of this action, EPA found that the State's submittal appropriately addressed the best available retrofit technology (BART) requirements for some sources but failed to satisfy BART for two sources, namely St. Marys Cement (SMC) and Escanaba Paper Company. EPA promulgated a Federal Implementation Plan (FIP) that included nitrogen oxide emission (NOx) limits for these two sources and sulfur dioxide emission limits for SMC to satisfy these requirements on December 3, 2012 (77 FR 71533).

In order to satisfy the requirements for BART for certain taconite ore processing facilities in Minnesota and Michigan, EPA promulgated a taconite FIP on February 6, 2013 (78 FR 8706), and revised the taconite FIP on April 9, 2015 (81 FR 21672). In

Michigan, the taconite facility impacted by this FIP is the Tilden Mining Company.

Michigan submitted its five-year progress report on January 12, 2016. The State submitted its determination of adequacy with the progress report.

The emission reductions from several Federal programs are contributing to visibility improvement in Michigan. In its regional haze plan, Michigan considered the emission reductions from the Tier 2 Gasoline, Heavy-duty Highway Diesel, Non-road Diesel, and a variety of Maximum Achievable Control Technology programs. Michigan also relied, in part, on the Clean Air Interstate Rule (CAIR) to meet certain regional haze requirements. EPA issued a limited disapproval of Michigan's regional haze SIP based on its reliance on CAIR and issued a FIP on June 11, 2012 replacing reliance on CAIR with reliance on the Cross State Air Pollution Rule (CSAPR) (77 FR 33642).

EPA published a direct final rule (DFR) on October 18, 2017 (82 FR 48435), approving the Michigan regional haze progress report as a revision to the Michigan SIP, along with a proposed rule (82 FR 48473), that provided a 30-day public comment period.

The DFR states that if EPA received adverse comments, EPA would publish a timely withdrawal of the DFR in the Federal Register informing the public that the rule will not take

effect. EPA received adverse comments during the comment period, and the October 18, 2017 DFR approving the Michigan regional haze progress report was withdrawn on December 8, 2017 (82 FR 57836). The adverse comments received are addressed below.

EPA evaluated the Michigan submittal assessing the state's progress in implementing its regional haze plan during the first half of the first implementation period, as well as the statutory and regulatory background for Michigan's regional haze plan. The DFR also provided a description of the regional haze requirements addressed in the Michigan progress report.

II. What is EPA's Response to the Comments?

EPA received four comments on the DFR (82 FR 48435). In the first comment, New Jersey expressed concern over sources in Michigan impacting Class I areas in the northeast. The second and third comments were anonymous and dealt with Federal Implementation Plans (FIPs) and regional trading programs, respectively. A fourth comment was not relevant to the rulemaking. We will address the comments here.

Comment #1 - EPA received a comment from the New Jersey Department of Environmental Protection (NJDEP) stating that EPA cannot approve the Michigan regional haze 5-year progress report because it is unclear how the State has addressed the request from the Mid-Atlantic Northeast Visibility Union (MANE-VU)

states to reduce emissions from several electric generating units in Michigan. NJDEP noted that two of the facilities in Michigan identified by MANE-VU -- Trenton Channel (Unit 9A) and Saint Clair (Unit 7) -- have not reduced sulfur dioxide emissions and thus remain large uncontrolled sources of sulfur dioxide that adversely impact visibility in the MANE-VU region.

EPA's Response - Michigan is a member of the Midwest Regional Planning Organization (Midwest RPO), a collaborative effort of state governments and federal agencies to coordinate activities associated with the management of regional haze, visibility, and other air quality issues in the Midwest. During the first planning period of the regional haze program, the Midwest RPO and other regional planning organizations facilitated consultations between states to help in the determination of appropriate control strategies for regional haze. The adequacy of Michigan's consultation with other states and its responses to other states' requests for specific emissions reductions were reviewed in EPA's assessment of its regional haze SIP submitted in 2010. EPA approved Michigan's decision to not require source-specific controls at Trenton Channel (Unit 9A) and Saint Clair (Unit 7) at that time. Given this, NJDEP's comments regarding Michigan's response to the request from MANE-VU fall outside the scope of this rulemaking.

We do note, however, that the two sources specifically

mentioned in NJDEP's comment, Trenton Channel Unit 9A and Saint Clair Unit 7, owned by DTE Energy, are tentatively scheduled to be shut down¹ in 2023.

EPA concludes that Michigan has adequately addressed the provisions under 40 CFR 51.308(h).

Comment #2 - EPA received an anonymous comment that argued that EPA cannot approve the Michigan regional haze 5-year progress report because Michigan relies on FIPs which cannot be enforced by the public.

EPA's Response - We do not agree with the comment that measures contained in FIPs are not federally enforceable. Emission standards or limitations in a FIP are potentially subject to enforcement through action by citizens in the district courts of the United States. 42 U.S.C. 7604.

Comment #3 - EPA received an anonymous comment that argued that EPA cannot approve the Michigan regional haze 5-year progress report because EPA should not be allowed to use regional trading programs to achieve BART reductions.

EPA's Response - The regulations governing progress reports do not include a requirement for states (or EPA) to ensure that all applicable regional haze requirements for the

¹ According to testimony by DTE before the Michigan Public Service Commission, DTE "tentatively plans" to retire Trenton Channel Unit 9 and St Clair Unit 7. "Qualifications and Direct Testimony of Franklin D. Warren; DTE Electric Company's Application Proposed Notice of Hearing, Direct Testimony and Exhibits before the Michigan Public Service Commission" (April 17, 2017). The company has subsequently indicated that the coal fired power plant units will be replaced with a natural gas facility.

first planning period have been met by the existing plan. As such, this comment raises issues outside the scope of this rulemaking. We do note, however, that EPA's determination that states may rely on CSAPR, a regional trading program, to meet the BART requirements has been upheld by the Court of Appeals for the District of Columbia Circuit. *Utility Air Regulatory Group v. EPA*, 885 F.3d 714 (D.C. Cir. 2018).

In summary, EPA disagrees that the points raised by the commenters prevent approval of the progress report. EPA finds that Michigan's progress report satisfies 40 CFR 51.308.

III. What Action is EPA Taking?

EPA is approving the Michigan regional haze progress report under the CAA as a revision to the Michigan SIP. EPA finds that Michigan has satisfied the progress report requirements of the Regional Haze Rule. EPA also finds that Michigan has met the requirements for a determination of the adequacy of its regional haze plan with its negative declaration submitted with the progress report.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of

the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act

of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations,
Nitrogen dioxide, Ozone, Particulate matter, Reporting and
recordkeeping requirements, Sulfur oxides, Volatile organic
compounds.

Dated: May 16, 2018.

Cathy Stepp,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In §52.1170, the table in paragraph (e) is amended by adding the entry “Regional Haze Progress Report” to follow the entry titled “Regional Haze Plan” to read as follows:

§52.1170 Identification of plan.

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(e) * * *

EPA--APPROVED MICHIGAN NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Name of nonregulatory SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA Approval date	Comments
* * *	* * *	*	*	
Regional Haze Progress Report	Statewide	1/12/2016	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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[FR Doc. 2018-11566 Filed: 5/31/2018 8:45 am; Publication Date: 6/1/2018]